



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2007

Ms. Karen Rabon  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2007-09691

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 285822.

The Office of the Attorney General (the "OAG") received a request for the personnel files of Sergeant May and Investigator Steptoe. The OAG claims information in Sergeant May's personnel file is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.130, 552.136, and 552.137 of the Government Code. Because the OAG has informed us that Investigator Steptoe is not an OAG employee, we assume the OAG has no information responsive to this part of the request. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.<sup>1</sup>

First, we note the information includes a completed evaluation. Section 552.022(a)(1) provides a completed evaluation made of, for, or by a governmental body is not excepted from required disclosure unless it is expressly confidential under other law or except as provided by section 552.108. Gov't Code § 552.022(a)(1). The OAG asserts the completed evaluation is excepted under section 552.103. However, section 552.103 is a discretionary exception that is intended to protect only the interest of the governmental body and may be

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See *Open Records Decision* Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 does not make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, section 552.103 is not “other law” that makes information confidential, and the OAG may not withhold the completed evaluation under section 552.103. Because the OAG also asserts section 552.108, we will consider whether section 552.108 excepts the evaluation and the rest of the information from disclosure.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The OAG argues section 552.108(a)(1) is applicable because Exhibit B relates to a pending criminal investigation conducted by the OAG’s Criminal Law Enforcement Division (the “CLED”). The officer whose information is requested is the investigator in the case at issue. Based upon this representation, we conclude release of Exhibit B would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the OAG may withhold Exhibit B under section 552.108(a)(1). Because section 552.108 is dispositive, we do not address the OAG’s other assertions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 285822

Enc: Submitted documents

c: Mr. Hugh Coleman  
Hays, Berry, White & Vanzant  
512 West Hickory, Suite 100  
Denton, Texas 76201  
(w/o enclosures)